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8 ATTORNEYS FOR PLAINTIFF  
9 WHOLE E NATURE, LLC

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

10 WHOLE E NATURE, LLC a California  
11 limited liability company,

12 Plaintiff,

13 v.

14 THE WONDERFUL COMPANY, LLC, d/b/a  
15 POM Wonderful, a California limited liability  
16 company, and Does 1-20,

17 Defendant(s).

**COMPLAINT FOR  
DECLARATORY RELIEF**

1 Plaintiff Whole E Nature, LLC (“Plaintiff”) brings this Complaint against Defendant The  
2 Wonderful Company LLC, d/b/a POM Wonderful (“POM”) and alleges, on personal knowledge as  
3 to its own actions and on information and belief as to the actions of others, as follows:

#### 4 INTRODUCTION

5 1. Plaintiff brings this action for declaratory relief to protect its brand from a baseless  
6 trademark infringement threat by POM. Plaintiff produces a line of beverages made with coconut  
7 oil; this super-drink is sold under the trademark WONDER FUEL.

8 2. POM has asserted that Plaintiff’s use of the WONDER FUEL mark on its products  
9 somehow infringes and/or dilutes POM’s existing marks, even though the products are different,  
10 the trade dress is different, there exist “Wonderful” trademarks and brands other than POM’s, and  
11 there is no possibility that consumers have confusion between the two brands.

12 3. Plaintiff seeks a declaration that its use of the trademark WONDER FUEL does not  
13 infringe, dilute, or otherwise violate POM’s trademark rights, and that its pending USPTO  
14 application for the WONDER FUEL mark be issued.

#### 15 THE PARTIES

16 4. Plaintiff is a California limited liability company with its principal place of business  
17 at 888 Prospect Street, Suite 200, La Jolla, CA 92037. Plaintiff is the successor-in-interest to  
18 Amnistad, LLC, which transferred all right and interest in the WONDER FUEL trademark at issue.

19 5. On information and belief, POM is a California limited liability company with its  
20 principal place of business at 11444 W Olympic Blvd, 10th Floor, Los Angeles, CA 90064.

#### 21 JURISDICTION

22 6. This Court has original jurisdiction over the claim for declaratory relief under 28  
23 U.S.C. §§ 2201 and 2202 (the Declaratory Judgment Act) and 15 U.S.C. § 1051 et seq. (the  
24 Trademark Act), as well as under 28 U.S.C. §§ 1331 and 1338, because Plaintiff brings this action  
25 for the purpose of determining a question of actual controversy between the parties arising under  
26 the trademark laws of the United States.

27 7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a  
28 substantial part of the events giving rise to this Complaint occurred in this judicial district.

8. This is an intellectual property action and thus may be assigned to a division of the Court on a district-wide basis.

### **BACKGROUND**

#### **A. Plaintiff and the WONDER FUEL Brand**

9. Plaintiff is a small start-up company that makes exclusively vegan, organic superfood drinks, which are sold under the WONDER FUEL mark and brand. The WONDER FUEL products were conceived by Plaintiff's founder Sioma Waisburd when he traveled to India to study Ayurvedic medicine. He had always loved coconuts, but during his time in India he realized the potential of bringing the energy-providing benefits of coconut oil to the United States in beverage form: WONDER FUEL.

10. The WONDER FUEL products are unique in that they contain coconut oil, which is a natural source of Medium Chain Triglycerides (MCT). As Sioma discovered in India, MCT has been used for centuries as a source of quick, natural physical and mental energy that does not lead to a "crash." MCT is increasingly recognized by United States consumers as a desirable ingredient for its energy-boosting qualities. Coconut oil ingestion is becoming more and more widespread, as consumers seek out products that contain coconut oil as an alternative to less natural sources of energy.

11. WONDER FUEL products are growing in popularity because their most significant ingredient is coconut oil, which consumers specifically look for in their superfood beverages. WONDER FUEL products contain no fruit (aside from the coconut oil, coconut water and coconut milk) or fruit juices. There are two variations on the original flavor WONDER FUEL coconut oil superfood beverage: coffee and mocha flavors. As the WONDER FUEL products are an energy-boosting superfood, the Coffee and Mocha flavors, which combine MCT energy with the caffeine from coffee, were a natural expansion of the line.

12. WONDER FUEL products have been sold under the WONDER FUEL mark since January 2016.

13. Plaintiff has common law trademark rights in the WONDER FUEL mark. WONDER FUEL is a unique coined phrase that Sioma came up with to describe his unusual

1 superfood products and their energy-producing qualities, i.e., “fuel,” whose textbook definition is a  
2 material burned to produce power and energy. WONDER FUEL products have been sold since at  
3 least as early as January 2016 and consumers associate the WONDER FUEL mark with Plaintiff’s  
4 MCT-fortified beverages.

5 14. On July 7, 2015, Amnistad, LLC applied for registration at the U.S. Patent and  
6 Trademark Office (“USPTO”) for WONDER FUEL in connection with “Organic ready-to-drink  
7 nutritionally fortified beverages.” The USPTO assigned this application U.S. Serial No. 86685408  
8 (the “Application”). The USPTO reviewed the Application and determined that there were no  
9 conflicting marks that would bar registration of the WONDER FUEL mark in the Application. The  
10 USPTO approved the Application for publication, and the Application was published on February  
11 2, 2016.

12 **B. POM’s Baseless Claims of Infringement and Dilution**

13 15. On or about April 19, 2016, counsel for POM contacted counsel for Plaintiff to  
14 discuss the pending WONDER FUEL application and POM’s opposition to it. During the  
15 conversation, POM indicated that Plaintiff’s use of the WONDER FUEL mark was infringing of  
16 POM’s mark and that POM would seek to enjoin any use of the mark on products in commerce.  
17 While POM indicated it would have no opposition to selling off existing product, that such sales  
18 should not continue using the WONDER FUEL mark.

19 16. Thereafter, on May 31, 2016, POM filed a Notice of Opposition to Plaintiff’s  
20 Application to register WONDER FUEL. The USPTO assigned the Opposition Proceeding  
21 Opposition No. 91228174.

22 17. POM erroneously listed Amnistad, LLC as the defendant in the Notice of  
23 Opposition. On December 22, 2015, Amnistad, LLC transferred all right and interest in the  
24 WONDER FUEL trademark and the Application, and all goodwill associated with the trademark  
25 and the Application, to Plaintiff. This assignment was filed with the USPTO on January 4, 2016,  
26 before POM filed the Notice of Opposition.

27 18. POM based its Notice of Opposition on several registrations for the mark  
28 WONDERFUL in connection with various food products, two registrations for the mark POM

WONDERFUL and design in connection with fruit juices, and one registration for the mark A HEALTHY DOSE OF WONDERFUL in connection with iced teas and fruit juices. These include the following claimed registrations (the “POM Marks”):

TRADEMARK REGISTRATION	CLASS and GOODS
POM WONDERFUL & Design Registration No. 2780314	Class 31 for fresh fruits Class 32 for fruit juices and fruit juice concentrates
POM WONDERFUL & Design Registration No. 2864641	Class 31 for fresh fruits Class 32 for fruit juices and fruit juice concentrates
A HEALTHY DOSE OF WONDERFUL Registration No. 4965046	Class 30 for Iced teas; Iced teas containing fruit juice; Iced tea based beverages containing fruit flavoring; Non-alcoholic iced tea; Non-alcoholic tea-based beverages; Non-alcoholic tea based beverages containing fruit flavoring Class 32 for Fruit juice; Fruit juice concentrate; Fruit drinks; Fruit flavored beverages; Non-alcoholic beverages containing fruit juices; Non-alcoholic beverages containing fruit extracts
WONDERFUL Registration No. 4897336	Class 29 for flavored nuts, salted nuts, shelled nuts, roasted nuts; processed nuts

19. The PTO approved and published for opposition the WONDER FUEL mark finding no confusion with any of POM’s registered WONDERFUL marks, the handful of WONDERFUL marks owned by other businesses, or with the hundreds of other registered marks with WONDERFUL in their name.

20. In the Notice of Opposition, POM claimed that Plaintiff’s “proposed use and registration of the WONDER FUEL Mark in connection with the Applicant’s Goods is likely to cause confusion, deception and/or mistake among the relevant public.” POM further claimed that “[t]he purchasing public is likely to be led to believe that goods bearing the WONDER FUEL Mark emanate from or are approved, licensed, sponsored by, or in some other way legitimately connected with or affiliated with, Opposer or that Applicant and its business are owned by or are affiliated

with Opposer and its business,” and that “[i]f Applicant is permitted to use the WONDER FUEL Mark as specified in the Application, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the similarity between the WONDER FUEL Mark and the WONDERFUL Marks.”

21. POM’s Notice of Opposition also claimed that Plaintiff’s “registration of and any future use of the WONDER FUEL Mark on Applicant’s products is likely to cause dilution of [POM’s] famous WONDERFUL® Marks by impairing the distinctiveness of the WONDERFUL® Marks (blurring).”

22. Given the differences in the trademarks and their listed goods, Plaintiff’s use and Application for WONDER FUEL in connection with “Organic ready-to-drink nutritionally fortified beverages,” in particular, beverages containing coconut oil, is not likely to cause confusion with POM’s claimed trademarks.

23. The overall commercial impression projected by the marks, including how the marks are actually used, also demonstrates that there can be no likelihood of confusion. As seen below, the products are presented in entirely different ways via trade dress and the overall look and feel. In specific, the trade dress of Plaintiff’s WONDER FUEL product emphasizes the separate nature of the two words “wonder” and “fuel,” places a coconut front and center, and is dressed in packaging that is light-colored and full of information about the product’s coconut oil-based benefits.





24. WONDER FUEL products are sold in a traditional multi-colored bottle and project a whimsical, bubbly impression that emphasize that coconut, fuel, and energy are essential aspects of the brand.

25. POM's juice products, by contrast, emphasizes the house mark POM in super-sized script (as opposed to the word "wonderful"), and its packaging is spare and dark-colored – using a distinctive clear "hourglass" bottle and dark juice:



26. In its opposition, POM also has challenged the Application on grounds that WONDER FUEL somehow dilutes POM's mark. This theory is even more unlikely because it would require POM to establish that consumers view "WONDERFUL" as essentially the same as the word mark WONDER FUEL. Plaintiff is confident that no such possible similarity exists.

27. In August and September 2016, Counsel for Plaintiff contacted POM's counsel by phone and in writing, asking POM to withdraw the Notice of Opposition and refrain from taking legal action against Plaintiff, as there is no likelihood of confusion, no dilution, and no other violation of POM's rights caused by Plaintiff's use and registration of its WONDER FUEL mark. POM, through its counsel, refused to withdraw the Notice of Opposition, and refused to waive any right to challenge Plaintiff's use of the WONDER FUEL mark. As part of the parties' discussion, POM's counsel indicated that Plaintiff's use of its mark would constitute trademark infringement.





5 Plaintiff prays for final judgment as follows:

6           A.       That this Court declare that Plaintiff's use, application and registration of the  
7 WONDER FUEL mark does not infringe on, dilute, or otherwise violate any valid right of  
8 Defendant POM under applicable federal or state law.

9           B.       That this Court declare that Plaintiff's activities have not caused any harm to POM  
10 or unjust enrichment to Plaintiff.

D. That this Court direct the U.S. Patent and Trademark Office to register the WONDER FUEL trademark in Application Serial No. 91228174.

14 E. That, by way of further relief, this Court grant a permanent injunction enjoining and  
15 restraining POM and its officers, directors, agents, servants, employees, and attorneys, and those in  
16 active concert or participation with them, from directly or indirectly charging infringement,  
17 dilution, or other legal violation, or instituting any action for infringement, dilution, or other  
18 violation of alleged rights of POM in the POM Marks against Plaintiff or any of its agents, direct or  
19 indirect customers, or any person, by reason of the use or registration of Plaintiff's WONDER  
20 FUEL mark.

21 F. That this Court award to Plaintiff its reasonable costs, disbursements, and attorneys’  
22 fees incurred in defending its rights to the WONDER FUEL mark against the claims and  
23 allegations of POM.

24 G. That this Court grant such other and further relief as this Court may deem just and  
25 proper.

1 Dated: November 4, 2016

Respectfully Submitted,

2 BRAUNHAGEY & BORDEN LLP

3  
4 By: /s/ J. Noah Hagey  
J. Noah Hagey

5 Attorneys for Plaintiff  
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